**Remarks/Arguments**

Rejections under 35 U.S.C. § 102

Claims 1-7

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 8,835,851 to Rasmusson, et al. ("Rasmusson"). Applicant submits that this reference does not anticipate the subject matter of claim 1 under 35 U.S.C. §102(b). The PTO provides in MPEP § 2131 that "[t]o anticipate a claim, the reference must teach every element of the claim..." Therefore, with respect to claim 1, to support a rejection under 35 U.S.C. § 102(b), Rasmusson must teach every element of claim 1.

Claim 1 recites in part, "in response to the data from the first party not being substantially all speech data, then determining whether a silent data threshold has been reached." To satisfy this element, the Examiner cites figure 4 of Rasmusson, which is explained in greater detail in column 5, line 21 through column 6, line 65. However, neither the cited portion, nor any other part, of Rasmusson teaches or suggests determining whether a silent data threshold has been reached. Therefore, for at least this reason, the 35 U.S.C. § 102(b) rejection of claim 1 is not supported by Rasmusson and should be withdrawn.

Claims 2, 5, and 7, which depend from and further limit claim 1, are also rejected under 35 U.S.C. § 102(b) as anticipated by Rasmusson. However, since Rasmusson fails to teach or suggest every element of claim 1, as discussed above, claims 2 and 5 should also be in condition for allowance.

Claims 3 and 4, which depend from and further limit claim 1, where rejected under 35. U.S.C. § 103 as obvious over Rasmusson in light of U.S. Patent No. 5,978,753 to Bridges ("Bridges"). In rejecting claims 3 and 4, the Examiner has relied on Rasmusson to satisfy all elements found in claim 1. Rasmusson fails to teach or even suggest every element of claim 1 as discussed above and therefore the combination of Rasmusson and

Bridges also fails to teach or suggest every element of claims 3 and 4. Thus, claims 3 and 4 should be allowable over the art as cited.

Claim 6, which depends from and further limits claim 1, was rejected 35. U.S.C. § 103 as obvious over Rasmusson in light of U.S. Patent No. 6,526,140 to Marchock, et al. ("Marchock"). In rejecting claim 6, the Examiner has relied on Rasmusson to satisfy those elements found in claim 1. Rasmusson fails to teach or even suggest every element of claim 1, as discussed above, and therefore the combination of Rasmusson and Marchock also fails to teach or suggest every element of claim 6. Thus, claim 6 should be allowable over the art as cited.

### Claims 8-13

Claim 8 was rejected under 35 U.S.C. § 102(b) as being anticipated by Rasmusson. Applicant submits that Rasmusson does not anticipate the subject matter of claim 8 under 35 U.S.C. §102(b). As stated previously, to anticipate a claim, the reference must teach every element of the claim. Therefore, with respect to claim 8, to support a rejection under 35 U.S.C. § 102(b), Rasmusson must teach every element of claim 8.

Claim 8 recites in part, "in response to the data from the first party not being substantially all speech data, then determining whether a silent data threshold has been reached." To satisfy this element, the Examiner cites figure 4 of Rasmusson, which is explained in greater detail in column 5, line 21 through column 6, line 65. However, neither the cited portion, nor any other part, of Rasmusson teaches or suggests determining whether a silent data threshold has been reached. Therefore, for at least this reason, the 35 U.S.C. § 102(b) rejection of claim 8 is not supported by Rasmusson and should be withdrawn.

Claims 9, 12, and 13, which depend from and further limit claim 8, are also rejected under 35 U.S.C. § 102(b) as anticipated by Rasmusson. However, since Rasmusson fails to teach or suggest every element of claim 8, as discussed above, claims 9, 12, and 13 should also be in condition for allowance.

Claims 10 and 11, which depend from and further limit claim 8, were rejected under 35. U.S.C. § 103 as obvious over Rasmusson in light of Bridges. In rejecting claims 10 and 11, the Examiner has relied on Rasmusson to satisfy those elements found in claim 8. Rasmusson fails to teach or even suggest every element of claim 8 as discussed above, and therefore the combination of Rasmusson and Bridges also fails to teach or suggest every element of claims 10 and 11. Thus, claims 10 and 11 should be allowable over the art as cited.

### Claim 21

Claim 21 was rejected under 35 U.S.C. § 102(b) as being anticipated by Rasmusson. Applicant submits that Rasmusson does not anticipate the subject matter of claim 21 under 35 U.S.C. §102(b). As stated previously, to anticipate a claim, the reference must teach every element of the claim. Therefore, with respect to claim 21, to support a rejection under 35 U.S.C. § 102(b), Rasmusson must teach every element of claim 21.

Claim 21 recites in part, "if the data from the first party is not substantially all speech data, then determine whether a silent data threshold has been reached." To satisfy this element, the Examiner cites figure 4 of Rasmusson, which is explained in greater detail in column 5, line 21 through column 6, line 65. However, neither the cited portion, nor any other part, of Rasmusson teaches or suggests determining whether a silent data threshold has been reached. Therefore, for at least this reason, the 35 U.S.C. § 102(b) rejection of claim 21 is not supported by Rasmusson and should be withdrawn.

Rejections Under 35 U.S.C. §103

### Claims 14-20

Claims 14-20 were rejected under 35. U.S.C. § 103 as obvious over combinations of Rasmusson with Bridges and/or Marchock. The Applicant traverses these rejections on the grounds that the references are defective in establishing a *prima facie* case of obviousness with respect to claims 14-20. The PTO recognizes in MPEP § 2142 that the Examiner must factually support a *prima facie* case of obviousness before the Applicant is under any obligation to submit evidence of nonobviousness.

Initially, the references do not combine to teach the claimed subject matter. In rejecting claims 14-20, the Examiner has relied on Rasmusson to satisfy some of the elements found in claim 14. Claim 14 recites in part, "if the data from the first party is not substantially all speech data, then determine whether a silent data threshold has been reached." To satisfy this element, the Examiner cites figure 4 of Rasmusson, which is explained in greater detail in column 5, line 21 through column 6, line 65. However, neither the cited portion, nor any other part, of Rasmusson teaches or suggests determining whether a silent data threshold has been reached. Thus the combination of Rasmusson with Bridges and/or Marchock, as cited, fails to teach or suggest every element of claims 14-20. For at least this reason, claims 14-20 should be allowable.

The Examiner has also failed to provide a motivation from the prior art to combine the references as the Examiner has. Assuming *arguendo* that the references did combined to teach the claimed limitations, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination," as stated in the MPEP at § 2143.01. Thus, without a basis in the art for combining the references, the 35 U.S.C. § 103 rejection of claims 14-20 cannot be sustained.
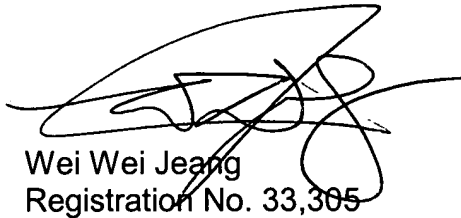
## Conclusion

It is clear from all of the foregoing that all claims are in condition for allowance. Notice of allowance all claims is therefore requested.
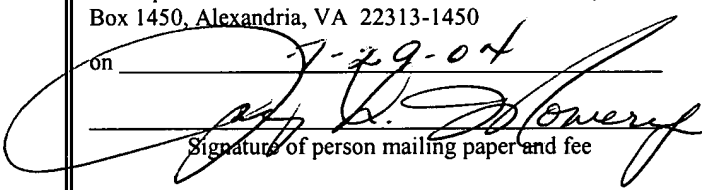
Respectfully submitted,

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